

SUPREME COURT OF ARKANSAS

No. 06-933

JAMES R. MUNSON, JR.,
APPELLANT,

VS.

ARKANSAS DEPARTMENT OF
CORRECTION SEX OFFENDER
SCREENING & RISK ASSESSMENT ,
APPELLEE,

Opinion Delivered March 22, 2007

APPEAL FROM THE PULASKI
COUNTY CIRCUIT COURT, FIFTH
DIVISION,
NO. CV 05-9927,
HON. WILLARD PROCTOR, JR.,
JUDGE,

APPEAL DISMISSED WITHOUT
PREJUDICE; MOTIONS MOOT.

ANNABELLE CLINTON IMBER, Associate Justice

Appellant James R. Munson was convicted of first-degree violation of a minor and sentenced to fifteen (15) years' imprisonment. We affirmed his conviction in *Munson v. State*, 331 Ark. 41, 959 S.W.2d 391 (1998).

On September 4, 2003, the Arkansas Department of Corrections Sex Offender Screening and Risk Assessment Committee (SOSRA) assessed Munson as a level III sex offender. Munson timely filed his request for administrative review of the assessment on September 15, 2003. Following an extended exchange of correspondence between Munson and SOSRA, Munson filed a petition for judicial review of SOSRA's assessment on July 28, 2005, and the circuit court dismissed his petition as being untimely. He then lodged an appeal in this court and presently has two motions pending here: (1) a motion to complete the

record and (2) a motion to duplicate his briefs at the state's expense.

As we find no merit to the appeal, the appeal is dismissed without prejudice, and Munson's motions are moot. This court has consistently held that an appeal from the denial of postconviction relief will not be permitted to go forward where it is clear that the appellant could not prevail. *Booth v. State*, 353 Ark. 119, 110 S.W.3d 759 (2003) (*per curiam*); *Pardue v. State*, 338 Ark. 606, 999 S.W.2d 198 (1999) (*per curiam*).

Pursuant to the Sex Offender Registration Act of 1997, codified at Ark. Code Ann. §§ 12-12-901 through 12-12-922 (Repl. 2003 & Supp. 2005), the SOSRA committee shall conduct a sex offender risk evaluation and assessment to determine a sex offender's risk level. See Ark. Code Ann. §§ 12-12-921– 12-12-922. Upon receiving a copy of the assessment, the offender can challenge the assigned risk level by seeking an administrative review. *Id.* at § 12-12-922(b)(1)(A). The request for review must state that either the rules and procedures were not properly followed in reaching the decision of the offender's risk level, or there is evidence that was not available at the time of the assessment, which would have bearing on the assessment. *Id.* at § 12-12-922(b)(3)(A). A member of the committee then has thirty (30) days to review the offender's assessment and send the offender the findings of the review by certified mail. *Id.* at § 12-12-922(b)(6)(A) & (7)(A)(i). The offender has thirty (30) days, after he or she receives the findings, to file a petition for judicial review under the Arkansas Administrative Procedure Act. *Id.* at § 12-12-922(b)(7)(A)(ii). Under the Arkansas Administrative Procedure Act, a person has thirty (30)

days after he or she has been served with the “agency’s final decision” to file a petition for judicial review with the circuit court. Ark. Code Ann. § 25-15-212(b)(1) (Repl. 2003).

After being assessed as a level III sex offender in 2003, Munson requested an administrative review. The chair of the SOSRA committee, Billy Burris, responded to Munson’s request by a letter dated November 17, 2003. The letter in its entirety states as follows:

You have requested a review of your Risk Level Classification. Generally, review requests are based on new information unavailable at the time of the assessment, or allegations that policy and procedures governing the process was [sic] not followed. The information that you provided will be forwarded to the Sex Offender Screening & Risk Assessment [sic].

The only information to be reviewed will be that which may not have been reviewed previously. If that information was in fact reviewed, then your request for a review is not justified.

On December 3, 2003, Munson sent a letter to Burris confirming that he had received the November 17 letter. In his letter, Munson requested information regarding who would be reviewing his case, and a copy of the results of the review. Munson then proceeded to send a series of letters to Burris and Max Mobley, the secretary of the SOSRA committee, further inquiring as to whether the review had been held and about the results of the review.

On March 3, 2004, Mobley sent Munson a letter with a copy of the November 17 letter. In this letter, Mobley stated that the November 17 letter was Burris’s opinion on the review of Munson’s assessment. On March 14, 2004, Mobley sent Munson another letter

stating in part “[i]n case any confusion remains, Mr. Burris completed your review on November 17th. Your level 3 was upheld.” Mobley also wrote that he had listened to the tapes of Munson’s assessment interview, found no inappropriate actions on the part of the staff, and found Munson’s presentation to the committee lacking in credibility.

On March 29, 2004, Munson sent Mobley a letter, in which he confirmed receipt of the March 3 and November 17 letters. However, he alleged that the November 17 letter did not contain any results of his review and instead the letter merely stated that his assessment had been sent to the committee for review. Then, Munson once again requested the results of the committee’s review.

On April 6, 2004, Mobley sent Munson another letter in which he summed up the November 17 letter as meaning that Burris “looked at what you sent, and found no basis for review.” Mobley also indicated that the SOSRA committee did receive a copy of Burris’s opinion. He concluded by stating that Burris had written to Munson about the review on November 17 and reiterated to Munson “[y]our risk level has not changed, nor will it.”

Finally, Munson filed a petition for judicial review in the Pulaski County Circuit Court on July 28, 2005. In his petition, Munson alleged that Burris and Mobley were avoiding his assessment review, and he stated that he had no knowledge of the results of the committee’s review. In response, SOSRA filed a motion to dismiss, arguing that Munson’s petition was untimely. SOSRA asserted that Munson received the results of his review in the November 17 letter and again in the March 14 and April 6 letters but failed to file his petition until

several months after the thirty-day deadline had lapsed.

The circuit court entered an order granting SOSRA's motion to dismiss. In support of its order, the circuit court found that Munson received notice of the results of his administrative review through the November 17 letter and also received confirmation, through the March 14 and April 6 letters, that the November 17 letter constituted the results of his review. Based upon those findings, the circuit court concluded that Munson's petition for judicial review was not timely filed.

Under the Administrative Procedure Act, the judicial branch does not occupy a supervisory role by monitoring the day-to-day actions of the executive branch. *Viswanathan v. Mississippi County Cmty Coll. Bd. of Trs.*, 318 Ark. 810, 887 S.W.2d 531 (1994). Rather, it is only the agency's judicial functions that are subject to appellate review and then only as narrowly prescribed in the act. *Id.* at 812, 887 S.W.2d at 532-33. The question of whether a petition for judicial review is based upon a final agency decision is a jurisdictional matter that a court can address at anytime. *See id.*

We have held that final orders are needed for appellate review, including review of agency decisions in a circuit court, and we have defined a "final order" as "one that dismisses the parties, discharges them from the action, or concludes their rights to the subject matter in controversy." *McGann v. Pine Bluff Police Dep't.*, 334 Ark. 352, 974 S.W.2d 462 (1998). Additionally, a final decision or order of an agency "shall be in writing" and "shall include findings of fact and conclusions of law, separately stated." Ark. Code Ann. § 25-15-210

(b)(1) & (2) (Repl. 2002). Under the Sex Offender Registration Act, the SOSRA committee shall send an offender the findings of his or her administrative review by certified mail. Ark. Code Ann. § 12-12-922(b)(7)(A)(i) (Supp. 2005).

The circuit court here found that the November 17 letter was the SOSRA committee's final decision on Munson's administrative review. We disagree. The language of the letter does not clearly indicate that Munson's right of review has been concluded. Instead, the letter is framed in terms that indicate the review was still ongoing. The letter specifically states that Munson's information "*will be forwarded*" to the committee and "[t]he only information *to be* reviewed *will be* that which may not have been received previously." Moreover, the November 17 letter does not contain any findings of fact or law with regard to the administrative review. The letter merely sets out the procedures that the committee members follow in performing a review. Accordingly, we hold that Burris's November 17 letter did not constitute the SOSRA committee's final decision on the assessment of Munson as a level III sex offender.

The circuit court also found that Mobley's March 14 and April 6 letters gave Munson further notice that a final decision had been reached on his administrative review. As stated above, the Sex Offender Registration Act requires the SOSRA committee to send an offender the findings of his or her administrative review by certified mail. Ark. Code Ann. § 12-12-922(b)(7)(A)(i). The requirement that a final decision be sent by certified mail acts as a confirmation of the date on which the offender received the final decision and thereby

determines when the thirty-day deadline expires for filing a petition for judicial review under Ark. Code Ann. § 25-15-212(b). The record before us, however, does not contain any evidence that the March 14 and April 6 letters were sent by certified mail, as required by Ark. Code Ann. § 12-12-922(b)(7)(A)(i). Thus, without proof that the March 14 and April 6 letters were properly sent to Munson, we cannot say that either of those letters constituted a final decision under § 25-15-212(b). Moreover, in the absence of any proof that Munson received those letters, much less proof of dates of receipt, the deadline for filing a petition for judicial review—thirty (30) days after the offender receives the administrative review findings—cannot be determined. Ark. Code Ann. §§ 12-12-922(b)(7)(A)(ii), 25-15-212(b).

For the reasons stated above, we hold that Munson did not receive a final decision on his administrative review from the SOSRA committee. We therefore dismiss Munson's appeal without prejudice so that he can obtain a final decision from the SOSRA committee. Furthermore, this disposition of Munson's appeal renders the pending motions moot.

Appeal dismissed without prejudice; motions moot.